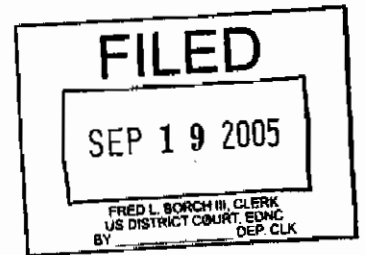


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:04-CR-211-BO(1)



UNITED STATES OF AMERICA

v.

DAVID A. PASSARO

MOTION FOR CLARIFICATION

DAVID ANTHONY PASSARO, defendant in the above-captioned case, by and through undersigned counsel, respectfully submits this motion for clarification of this Court's August 17, 2005 Order, which addressed several discovery motions. Specifically, Mr. Passaro requests clarification on whether that Order resolved defendant's Motion to Compel Discovery Relevant to the Public Authority Defense (Docket Entry No. 54), filed November 18, 2004, and Request Nos. 5 & 8 from defendant's Motion to Compel Discovery, filed November 12, 2004 (Docket Entry No. 51). In support of this motion the defendant offers the following:

1. Following a hearing on July 20, 2005, the Court issued an Order dated August 17, 2005, dismissing several discovery motions as moot, and denying other discovery motions. The Court dismissed as moot defendant's November 16, 2004 Motion for Compulsory Process, November 18, 2004 Supplemental Motion to Compel Discovery, and November 30, 2004 Motion to Preserve Sealed Ex Parte Documents (Docket Entry Nos. 49, 53, and 60, respectively). The Court denied defendant's Motion to Compel Government to Produce Material Witness, filed June 24, 2005 (Docket Entry No. 121). Finally, the Court denied that portion of defendant's November 12, 2004 Motion to Compel

(Docket Entry No. 51) that sought early production of witness statements.

2. The August 17, 2005 Order did not specifically address defendant's Motion to Compel Discovery Relevant to the Public Authority Defense (Docket Entry No. 54), filed November 18, 2004, or Request Nos. 5 & 8 from defendant's Motion to Compel Discovery, filed November 12, 2004 (Docket Entry No. 51).

3. At the July 20, 2005 Hearing, Counsel for defendant indicated that the parties had not reached agreement on the discovery requested in the two motions noted in Paragraph No. 2.

4. The notation in the docket entry for the Court's August 17, 2005 Order indicates that order denied defendant's Motion to Compel Discovery Relevant to Public Authority Defense.

5. The discovery sought by these two motions relates to defenses Mr. Passaro may raise at trial, currently scheduled for October 1, 2005.

Based on the foregoing, defendant respectfully seeks clarification from this Court whether the August 17, 2005 Order addressed the Motion to Compel Discovery Relevant to the Public Authority Defense (Docket Entry No. 54), filed November 18, 2004, and Request Nos. 5 & 8 from defendant's Motion to Compel Discovery, filed November 12, 2004 (Docket Entry No. 51).

Respectfully submitted this 19th day of September, 2005.

Thomas P. McNamara
THOMAS P. McNAMARA
Federal Public Defender
N.C. State Bar No. 5099

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served upon:

JAMES A. CANDELMO
Assistant United States Attorney
Suite 800, Federal Building
310 New Bern Avenue
Raleigh, NC 27601-1461

by hand delivering to Jennifer Myers, United States District Court Clerk, for courier pick-up by the United States Attorneys Office with a copy of the foregoing sent via secure facsimile to the Court Security Officer for classification review on,

This the 19th day of September, 2005.

Thomas P. McNamara
THOMAS P. McNAMARA
Federal Public Defender
N.C. State Bar No. 5099